

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DANNY F. LANE,

Plaintiff,

v.

**NASH FINCH COMPANY, a
corporation,**

Defendant.

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CASE NO. 8:11CV241

ORDER

This matter is before the Court on its own motion with respect to the Motion to Dismiss, or in the Alternative, Motion to Transfer (Filing No. 6) filed by the Defendant, Nash Finch Company. The Court requests supplemental briefing from the parties regarding whether Federal Rule of Civil Procedure 12(b)(3) is the proper mechanism for bringing a motion to dismiss when the issue turns on the applicability of a forum selection clause. See *Rainforest Café, Inc. v. EklecCo, LLC*, 340 F.3d 544, 546 n. 5 (8th Cir. 2003) (citing *Kerobo v. Sw. Clean Fuels Corp.*, 285 F.3d 531, 534-36 (6th Cir. 2002)); see also 14D Charles Alan Wright et al., *Federal Practice and Procedure: Jurisdiction* § 3803.1 (3d ed. 2011).

Accordingly,

IT IS ORDERED:

The parties will submit on or before September 9, 2011, simultaneous briefs addressing the question of whether Rule 12(b)(3) is the proper mechanism for bringing a motion to dismiss for improper venue when the issue turns on the applicability of a forum selection clause.

DATED this 31st day of August, 2011.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge